

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SLOAN MCNEES,

Plaintiff,

v.

G. TORREY, et al.,

Defendants.

Case No. 1:19-cv-121

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On August 15, 2019, Defendant Torrey filed a motion for partial summary judgment based on Plaintiff's alleged failure to exhaust administrative remedies, and the matter was referred to the Magistrate Judge. On October 11, 2019, Plaintiff filed a response to the summary judgment motion. On October 17, 2019, the Magistrate Judge issued a Report and Recommendation (R&R), recommending the Court grant Defendant Torrey's motion. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation, Defendant Torrey's response to Plaintiff's objections, and Plaintiff's "reply."¹ In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. For the following reasons, the Court grants the objections and rejects the Report and Recommendation.

¹ The Court has considered Plaintiff's filing (ECF No. 38), although there is no provision in the Court's Local Rules for the filing of a reply to a response to objections. See W.D. Mich. LCivR 72.3(b).

The Report and Recommendation was issued on October 17, 2019, indicating “Plaintiff ha[d] failed to respond to Defendant Torrey’s motion” (R&R, ECF No. 29 at PageID.127). Plaintiff argues that the Magistrate Judge erred in not considering his timely filed response to Defendant Torrey’s motion (Pl. Obj., ECF No. 34 at PageID.174). Defendant Torrey agrees with Plaintiff’s objection “insofar as the R&R did not consider [Plaintiff] McNees’ response to [Defendant] Torrey’s motion” (Def.’s Resp., ECF No. 37 at PageID.187). Defendant Torrey recommends that the Magistrate Judge “reconsider [Defendant] Torrey’s motion with [Plaintiff’s] response and [Defendant] Torrey’s reply” (*id.* at 188). Plaintiff opposes the filing of any reply by Defendant Torrey to his response to Defendant Torrey’s motion (ECF No. 38 at PageID.191). According to Plaintiff, Defendant Torrey “waived” such opportunity (*id.* at PageID.192).

Plaintiff’s objections have merit inasmuch as the Magistrate Judge did not consider his response in her Report and Recommendation on Defendant Torrey’s motion. Accordingly, this Court will grant the objections and reject the Report and Recommendation. Further, consistent with this Court’s local rules on dispositive motion practice and to facilitate a full review, the Court will provide a 7-day period for Defendant Torrey to file a reply to Plaintiff’s response (ECF No. 27) to his motion for partial summary judgment (ECF No. 20). *See* W.D. Mich. LCivR 7.2(c). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 34) are GRANTED and the Report and Recommendation of the Magistrate Judge (ECF No. 29) is REJECTED.

IT IS FURTHER ORDERED that Defendant Torrey may, not later than 7 days from the entry of this Opinion and Order, file a reply to Plaintiff’s Response (ECF No. 27).

Dated: January 17, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge